

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

**FIELDING KIMERY
ADC #133741**

PLAINTIFF

VS.

4:21-cv-00071-BRW-JJV

DEXTER PAYNE; *et al.*

DEFENDANTS

ORDER

I have reviewed the Proposed Findings and Recommended Disposition (Doc. No. 16) submitted by United States Magistrate Judge Joe J. Volpe. Plaintiff also filed a Motion to Amend Complaint (Doc. No. 17), which I interpret to be objections to the Recommended Disposition.

After carefully considering Mr. Kimery's timely filed objections and making a *de novo* review of the record, I approve and adopt the Proposed Findings and Recommended Disposition in all respects.

Accordingly, Plaintiff's claims are dismissed without prejudice for failure to state a claim on which relief may be granted, and the case is DISMISSED. The Motion to Amend Complaint has been considered (Doc. No. 17) and is MOOT.

Dismissal of this action counts as a "strike" for purposes of 28 U.S.C. § 1915(g).²

² Title 28 U.S.C. § 1915(g) provides as follows: "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

I certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from any Order adopting these recommendations and the accompanying Judgment would not be taken in good faith.

IT IS SO ORDERED this 26th day of March, 2021.

Billy Roy Wilson
UNITED STATES DISTRICT JUDGE